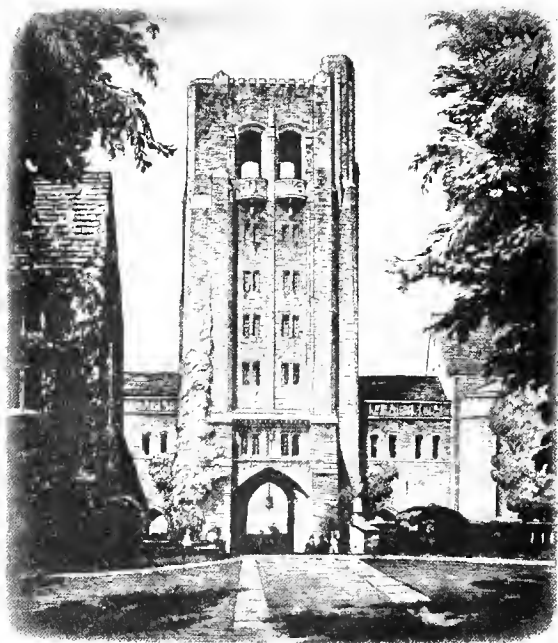


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SPEECH

OF

HON. CHARLES W. WILLARD,

OF VERMONT,

IN THE

HOUSE OF REPRESENTATIVES,

MARCH 24, 1874.



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S P E E C H
OF
HON. CHARLES W. WILLARD.

The House having under consideration the bill (H. R. No. 1385) to regulate commerce by railroads among the several States—

Mr. WILLARD said :

Mr. SPEAKER, when this subject of the regulation of rates of transportation of merchandise among the States was last before the House, I obtained the floor by the courtesy of a member of the committee, the gentleman from Missouri, [Mr. STONE;] and I was prepared at that time to speak with more method and directness than I shall now be able to do. If I proceed, therefore, in a somewhat desultory way, and with little attention to the logical order of my remarks, I hope this will be a partial excuse for so doing.

I deem it a favorable circumstance, in connection with this discussion, that it cannot fairly be said to take a party character. Gentlemen who have been always and still are associated with the democratic party have spoken in favor of this bill, and announced their purpose to vote for it. Gentlemen upon this side of the House, who have always acted with the republican party, have criticised sharply many of the features of the bill, and have announced their purpose of voting against it in its present shape. It does not, therefore, seem possible, Mr. Speaker, that party lines can or ought to be drawn in the settlement of so important a question as the proposed measure presents for the consideration of this body.

I know, sir, that in the discussion on the bill something has been said of State rights, as though that were a party tenet, as though one side of this House held exclusively the doctrine that the States had certain rights as against the Federal Government, and the other side of this House held the doctrine that the States had no rights as against the Federal Government. Now, sir, from my observation of political parties, and of the divisions that have taken place upon this question of State rights, I have not discovered that it can fairly be said to be a party question. It is not a principle; it is only a weapon, and the weapon of the party that is in a minority in the country. The party that is out of power in the Federal Government is always the party to assert and insist upon this doctrine of State rights, and the party that is in power, whatever may be its professions, whatever may be its platform, is more or less the party that always ignores or overrides State rights.

Why, sir, it is in the memory of every member on this floor that at the time of the enactment of the fugitive-slave law the party in power, the democratic party, stretched the doctrine of Federal control over matters of that sort beyond what had been claimed as possible by the whig party before that time. We all know that the State of Massachusetts, then a republican State, and the State of Wisconsin, then a republican State, and almost every republican State through-

out the North, by their Legislatures, by their resolutions, and by the directions they gave to their State officials, insisted that the States had rights as against the Federal Government which they would not surrender. The question of what these rights are, or where the dividing line shall be drawn in each particular instance, is not a political question, and ought never to be made a political question. It is a question of good government and wise legislation as much as a question of constitutional power; a question, independent of the limitations of the Constitution, of what is the best jurisdiction and where is the best legislative body to solve the various problems that arise in the administration of public affairs throughout the United States. It is a question how far the local governments are a better jurisdiction to settle these questions than the Federal Government, and how far the Federal Government is a better jurisdiction to settle these questions than the local governments. Some powers, as a matter of course, have been and must be conceded to the Federal Government, because the Federal Government alone can properly exercise such powers; and wherever such powers are granted to the General Government by the Constitution, as a matter of course the legality and constitutionality of their exercise are beyond question. But it does not follow even then, Mr. Speaker, were it settled that the power is a constitutional power, and that Congress had authority within the Constitution to exercise a given power, that therefore it must exercise it whenever anybody asks for its exercise; or that any measure which is not open to a constitutional objection is therefore wise and judicious.

Now, sir, the question has been argued in this case by some who support this bill much as though the only point to be settled here was the power of the Federal Government, or of the Congress of the United States, to regulate interstate commerce; as though, that point once settled, there was no escape from an affirmative vote on this bill. Now, I do not see why there is any occasion to deny, for political reasons or any other, or for the sake of making an argument against this bill, that the Federal Government has the same power and the same authority to regulate interstate commerce that it has to regulate foreign commerce. The terms of the grant in the Constitution are identical, and of course the power must be the same in the one case as in the other. But, sir, when you get beyond that, and proceed to consider what a regulation of commerce is, and what the regulation of commerce is that is proposed by this bill, and whether the propositions in this bill do not antagonize and are not hostile to other provisions of the Constitution, we meet at once, it seems to me, the very gravest and most serious objection to the measure we are now considering.

The bill provides in general terms for the appointment of a commission of nine persons, who shall have power, without any appeal from their decision, except the appeal that is subsequently provided for in the court, to determine what is a reasonable price for the transportation of freight over any railroad in the country that has a through connection.

These prices, having been once established by this board, are to be held, in all proceedings that may arise under them, as *prima facie* reasonable rates to be charged upon these roads; and the burden of proof is thereafter to be put upon the roads, if they attempt to attack such rates, to prove that they are less than a reasonable charge for transportation of freight over such roads.

We have as a starting point in the Constitution this provision in respect to the regulation of commerce. First, "Congress shall have

power to regulate commerce among the several States." Very well. Then there is a provision that by no regulation of commerce shall preference be given to the ports of one State over those of another State. So it will be seen that we have really gained little or nothing in determining what the power of Congress is in respect to the regulation of interstate commerce, when that power is conceded, inasmuch as any exercise of that power must be subject to all the limitations expressed or implied in other parts of the organic law, and is especially subject to the limitation as to the preference of the ports of one State over those of another. And it is noticeable that the provision that one port shall not have preference over another port by any regulation of commerce is more imperative than the provision "that Congress shall have power to regulate commerce;" because one is permissive and not mandatory, the other is prohibitory. Here, then, is one very significant limitation. What further?

I suppose no gentleman here will contend that any regulation of commerce is not open to constitutional objection which is not uniform, and by that I mean uniform in its operations. I understand that the Constitution does not in terms say that the regulations of commerce must be uniform in their operation. Congress may make uniform laws on the subject of bankruptcy; and certain legislation, like naturalization laws and tariff laws, must be uniform by the express terms of the Constitution. But I suppose no one will pretend for a moment, although the word "uniform" is not used in the Constitution in that connection, that regulations of commerce need not necessarily be uniform. In other words, there must be no injustice and no inequality in any respect in any regulations of commerce adopted by the Congress of the United States. All regulations must be alike. It must be one law for all, one regulation for all.

For instance, it would be an unequal and unjust regulation of commerce if the Congress of the United States should declare that one class of passenger-boats might run with greater pressure of steam to the square inch than another class, because they were navigating different waters or carried fewer passengers; or to say that one class of vessels should have one kind of accommodations for passengers, and another, although similar, class of passenger-vessels should have another kind.

Mr. BUTLER, of Massachusetts. Will it disturb the gentleman if I ask him a question at this time?

Mr. WILLARD, of Vermont. No, sir.

Mr. BUTLER, of Massachusetts. I desire to ask the gentleman whether this provision requires a uniform regulation? In regard to quarantine, one regulation of commerce would be that the port of Mobile or New Orleans, for instance, might be put in quarantine; and there might be another regulation that there was no occasion for quarantine at Portland, Maine. That would be a regulation of commerce, but it would not be uniform.

Mr. WILLARD, of Vermont. I agree with the gentleman, and for the reason that in the case he puts the regulation would only be applied to the ports where there was supposed to be need of it; but if the regulation was not applicable to every port in danger of infection it would not be uniform. It is not that if these commissioners should establish freights for one railroad and should not establish them for another, there would necessarily be a violation of what ought to be uniformity in the regulation of commerce; as it might happen that some of these roads now charge such low rates that no one would think of reducing them; although the regulation would

certainly lack uniformity if the law did not make it applicable to all the railroads of the country; and it would besides be partial, unequal, and unjust. But in the very nature of the case the proposed regulation cannot be uniform. It is not one law for all, nor one price for all, and cannot be.

Let me illustrate, and I will come to the other point in relation to the ports of entry further on.

I understand that this bill is based substantially on the Illinois legislation upon this subject. As I understand, the commissioners under the Illinois legislation, or the board, or whatever it is, that settles the question there, have classed the various railroads in the State of Illinois in proportion to the net profits of the business of the road. For instance, the Chicago and Alton Railroad is put into the first class as a railroad that has \$4,000 net profit per mile, while other railroads doing a less profitable business are put in other classes. There are, I think, four classes in all. They have determined in that State that freights carried over the Chicago and Alton Railroad shall pay a certain price per ton per mile; much less per ton, as I understand, than the charge for freight that is carried over other roads in the State which have not so large or profitable business. This, I agree, is just as between these roads; but it does not seem to me that it can in any sense of the word be said to be a uniform regulation. In other words, it seems to me, the objection is that, in the nature of things, it is impossible to regulate rates without establishing nearly as many different rates as there are different railroads. Can this be a uniform regulation?

Let me illustrate further. I suppose whatever else may have been in the minds of those who framed that provision of the Constitution as to the regulation of commerce, it was unquestionably contemplated that the regulations could only be made by Congress in cases where no other proper regulations could be made or established; in other words, where there was no other power competent to make regulations. Of course interstate commerce, in the ordinary sense in which we speak of it, can no more be regulated by one State than foreign commerce can be regulated by one State; we all understand that. Therefore, if it is regulated at all, it must be regulated by the Federal Government. But when we come to look at the question from the other side and see an attempt made to regulate it in some specific way, may we not say with great force that the fact that you cannot make a uniform regulation, a regulation that will apply to all railroads alike shows that no such regulation should be attempted? Is it not evident from this aspect of the question that no such regulation was contemplated by those who made the Constitution, since it is so manifest that it must lack every element of uniformity?

Mr. G. F. HOAR. Allow me to ask the gentleman whether a rule of law providing that the charges for carrying freight or passengers should reach only a reasonable sum, and no more, would not be uniform in every constitutional and legal sense, although the reasonable sum might vary in each particular case?

Mr. WILLARD, of Vermont. So far as that question is pertinent to the discussion I will reply to it, although I was intending in another part of my argument to make allusion to common carriers.

Mr. G. F. HOAR. My question relates directly to the point the gentleman is now discussing.

Mr. WILLARD, of Vermont. I do not understand, Mr. Speaker, that the regulation of rates of freight transported by common carriers is based upon the power of governments to regulate commerce; and

I suppose that whenever that regulation is resorted to, the sovereign power resorting to it would have the right to decide arbitrarily in the particular circumstances what should be the nature of the measure adopted.

Mr. G. F. HOAR. The gentleman does not understand my point. He is arguing that different railroads in different circumstances may charge different rates for the same character of freight carried similar distances; and hence he urges that it is impossible for us to adopt a regulation which shall be uniform. Now, my question is whether a rule of law which should require the railroads in each specific case to charge only a reasonable sum, and which should provide a means of ascertaining the sum and enforcing the obligation, would not be uniform within the meaning of the Constitution.

Mr. WILLARD, of Vermont. I think it clear that it would not be uniform in the sense intended by the Constitution. The word "uniform" is not used in the Constitution in respect to the regulation of commerce; and I have suggested this as a serious difficulty, and because it seemed to me to be a strong objection to any congressional interference with this matter, that it is quite impossible for Congress to adopt any rule that will apply to any two railroads alike. A reasonable rate cannot be a uniform rate, unless it is the same rate for equal distances, any more than a reasonable price for a commodity to be sold in the market would be a uniform price when different prices were fixed for the same commodity.

But, sir, let me call attention to the other provision of the Constitution, that no regulation of commerce shall give any preference to the ports of one State over those of another. Now, I hold that it is utterly impossible for the provisions of this bill to be carried out without bringing about precisely such a result; in other words, it is utterly impossible for nine men to attempt to regulate freights, however honestly they may set about the work, without preferring one port of the United States to another.

To illustrate: The city of Boston gets a large amount of freights from the West, that come in part over the Grand Trunk Railway of Canada, and over the Central Vermont Railway in Vermont, or by way of Portland; and in summer partly by water, via Ogdensburg. I apprehend that if an examination were made it would be found that in fact the Erie Railroad, the New York Central, the Pennsylvania Central perhaps, and the Baltimore and Ohio—those roads which have the shortest lines, taken altogether, from the West to the sea-board—fix the rates for the long lines; and that the long lines are obliged to agree to those rates, whatever they may be, because otherwise they do not get the freight. Gentlemen living in New England, especially those who reside in the vicinity of Boston, understand that the Vermont Central line, which carries much of this freight through my State to Boston, has been the line largely relied upon by Boston merchants and shippers as their line of transportation to and from the West. They have always felt a strong interest in it, though not, perhaps, so strong as their interest in the Boston and Albany road. What is the consequence? They have put their money largely into that road, and they have not expected large, if any, dividends on their money so invested, and certainly have not been disappointed in that respect. They cared much more to get their freight from the West to the sea-board cheaply, and from the sea-board back to the West cheaply, than they did about getting dividends on the \$5,000, or \$10,000, or \$50,000 each that they might have put into that corporation. The capital that they invested in it went out of sight

within five years after the building of the road, not by any dishonest management of the road, but because its business would not support it; because these Boston merchants insisted—and they insisted rightly, and the managers of the road looked upon the matter much in the same light—that freight should be brought over that line from the West to Boston as cheaply as it could be brought to New York by the Erie and New York Central roads. That road has carried freight right past my town from Chicago to Boston, month after month, at twenty-five cents per hundred pounds, the distance being more than a thousand miles; while we have been charged for the same classes of freight from Montpelier, Vermont, to Boston, a distance of two hundred miles, from seventy-five cents to ninety cents per hundred pounds. Carrying through freight in that way from the West to the sea-board, that road has helped to build up Chicago and other towns of Illinois, and of States farther west; it has contributed vastly to their development; while we at home have been charged upon our local freights as much for our short distances as has been charged to those who live a thousand miles beyond us toward the Mississippi River for the long distances which separate them from the sea-board.

And yet this railroad in my State was obliged to carry freight at that rate because the New York Central and the New York and Erie were carrying freight at that rate to Boston and New York, and in order to help Boston trade, and Boston merchants who had put their money into that road, they carried these freights for a good deal less than cost from the West to the sea-board, and made up in some degree their loss in that respect by charging to us at home who live alongside that railroad five or six times as much, ay, ten or twenty times as much per mile, as they charged these foreign shippers. Now, sir, this is not right, but it is a matter which cannot be regulated by statute. It will not be regulated by this statute. That road will have to carry freights at whatever price is fixed by the New York Central or the New York and Erie, or it cannot get them to carry. And if this commission should fix the rate of freights at five mills per ton per mile, or less, over the New York Central and the New York and Erie, the road in my State will have to carry them at the same rate or it will not get the freights. What will be the result? It will carry at that rate, and possibly less than that rate, and then it will turn around and grind us at home between the upper and nether millstone. It will put the burden upon our local freights from town to town in the State. It gives these low rates to foreigners, to persons who live a thousand miles away from the line of the road, but as compensation for it it charges higher rates upon us. There is no redress. We could not have any redress if we tried.

A commission in Vermont would be obliged to say that this national regulation is of superior right, if it has any right at all, and would be compelled to allow our railroads to charge a larger rate for short distances and for local freights, that they might earn enough to pay more than running expenses. They would be obliged, if a commission were established in my State on the same basis as the one in Illinois, to let these railroads charge exorbitant local rates in order that they might thus compensate themselves for the loss on through freight from distant points.

Now, Mr. Speaker, I will consider how this regulation of rates of freight will interfere with the constitutional prohibition against preferring the ports of one State over those of another by a regulation of commerce. It seems to me to be apparent that such regulation as is contemplated by the proposed legislation will inevitably bring

about such a result. Portland and Boston are farther from the Mississippi than New York or Baltimore, and are the termini; therefore, of the longer and less profitable lines of railroads. Rates, therefore, from the West over these longer lines will be fixed at a larger maximum per ton per mile than over the shorter lines; and as the bill forbids discrimination in favor of one shipper and against another, the longer and poorer lines will be obliged to reduce rates for all if they reduce them for any customers. This they cannot do and leave any margin for interest on their investments; and as the shorter lines are to be compelled to take all freight offered, the termini of these roads will most certainly thus be preferred as points of shipment, or New York, or Philadelphia, or Baltimore will have preference over Portland or Boston. The New York Central, the Pennsylvania Central, the Baltimore and Ohio, while allowed to charge less possibly than now, could still do a profitable business. They could carry freight, doubling their capacity for that purpose if need be, and perhaps would make more money than now, while these longer and less favored lines would be driven from the business of carrying these long freights, and could only transport the merchandise that might be shipped from point to point along their roads. Is it not thus clear that you would give preference to one port over another? And the same would be true if you fixed the rates for freight and passengers from any foreign port to the United States. Suppose, under some law similar to this bill, the fare for passengers from Liverpool to Boston should be a certain amount, while that for passengers from Liverpool to New York would be greater, the price being fixed by the mile; passengers coming from Liverpool to Baltimore, Savannah, or Charleston, the distance being greater, would pay more still. Would not that regulation be a regulation on the face of it which preferred one port to another? It seems to me clear that it would; and yet it is inevitable that it should be so in any attempt to regulate the matter of prices for transportation.

Admitting that the commissioners will be as honest and intelligent gentlemen as can be found in the United States, men who sincerely desire to make a schedule of rates which shall be in all respects just and reasonable, yet it would be impossible for them to do it without making this preference of the ports of one State over those of another.

Mr. FORT. I ask my friend from Vermont whether in arranging a schedule of rates the commissioners are bound to take into consideration that distance regardless of all other considerations?

Mr. WILLARD, of Vermont. It provides for fixing reasonable rates which must be with respect to the distance. A long line which has the least business will be allowed to charge larger rates, but shorter lines like the New York Central and Erie will be required to charge less. Rates will be fixed on such lines so low that the longer lines cannot carry except at rates much less than would be fixed as reasonable for them.

Mr. FORT. They are not bound to do it.

Mr. WILLARD, of Vermont. They are not bound to do it, but they will have to do it or not get the freights. But as to these other roads—indeed as to all roads—the bill contemplates a compulsory process to compel them to carry freights at such rates as may be fixed. It has been said in the course of the debate that the New York Central had largely watered its stock, and its rates were adjusted with reference to paying dividends on the whole of that stock. The desire of those urging this bill is to bring such roads down to hard-pan; to find out what was their actual cost, and to grade the price of freights

on that actual cost and the running expenses, which we all understand would bring the rates below what they now are on such roads. Yet the long roads are now carrying their through freight in many instances at less than cost, and if you cut down the rates on competing roads they cannot except at ruinous sacrifices engage in this competition, and the business must thus necessarily be diverted from the long roads, thus bringing about as the result a preference of one road to another, and as a consequence the preference of the ports at the termini of such roads over the ports less favorably situated.

But, Mr. Speaker, I have been led by questions addressed to me a little away from the order in which I proposed to discuss this bill; and inasmuch as I have so begun I may as well go on in this desultory manner and speak of other considerations that have occurred to me during my examination of it. It has been argued that common carriers must carry for a reasonable price, and that Congress may therefore, as a regulation of commerce, compel railroads to carry freight at a reasonable price. Now, I have not been able to see any connection, so far as the constitutional power of regulating commerce is concerned, between that and the law with respect to common carriers. We cannot take charge of these railroads, we cannot regulate freights upon these railroads because they are common carriers. This is not the way we get the power, if we have it at all. We get the power of regulation, so far as we have it at all, because they engage in commerce between the States; and they may be engaged in this commerce, not as common carriers, but quite independently of that, as express companies, or in any other way. Our power comes from the provision of the Constitution to regulate commerce. The question whether they are common carriers has nothing to do with it; nor has the fact that at the time of the adoption of our Constitution the Parliament of England had by statute fixed rates of freight over the highways of the kingdom of Great Britain. The two powers are distinct, and should not be confounded in the consideration of this bill. The only question is, is the measure embodied in this bill a proper exercise of the constitutional power of Congress to regulate commerce; and the analogies that are attempted to be found, therefore, in any government regulation of common carriers, whether ancient or modern, are misleading, untrustworthy, and deceptive.

And so, sir, when the common law has been stated here in respect to common carriers, it seems to me that that is not pertinent to this inquiry. I have been unable to find any case which fully maintains the law that has been quoted here so often in respect to common carriers. I find enough *dicta* of the law writers to the effect that common carriers can only charge a reasonable rate; but I have been unable to find a case where suit has been brought against them for refusing in advance to carry goods at rates they had previously fixed. Suits have been brought in many cases where they took the merchandise and transported it without anything being said as to the price; and in the end the courts held that the price they exacted was too large, and they were only allowed to retain what their services were worth. But I have not been able to find a case, and none has been cited, where that precise question has been before the court and it has been denied that a railroad or other common carrier had a right to make a contract or fix the price which it should receive for transporting freight or passengers. And considering that, as is asserted, this has been the law for a hundred years, it is singular that some such case should never have arisen, and the courts should not have settled long ago that it was already within their province to regulate

this matter of freight and the rates for carrying passengers on railroads.

Mr. G. F. HOAR. Does not the gentleman find in the ancient English cases the declarations are very numerous that that is the rule of law?

Mr. WILLARD, of Vermont. I have found such declarations, but I have always found the case to be something else.

Mr. G. F. HOAR. Will the gentleman allow me to ask him one other question?

Mr. WILLARD, of Vermont. Certainly.

Mr. G. F. HOAR. Has not the gentleman in his researches also found that it was the ancient English practice to regulate the charge of the public carrier on merchandise by the court of sessions fixing in advance his rates?

Mr. WILLARD, of Vermont. O yes, Mr. Speaker; the English Parliament passed a law providing that a certain commission, the court of sessions I think it was, should regulate rates over the high-ways of England. I so understand it.

Mr. G. F. HOAR. So that is it not true that when our Constitution was adopted our fathers found that the habit of fixing by a commission the rates for public carriers for merchandise was an ancient English regulation of commerce?

Mr. WILLARD, of Vermont. My recollection is that this country separated itself from Great Britain in a considerable degree because it did not like English laws, and I have never supposed that they adopted as laws in this country any laws other than those that the courts might hold were just and proper. Now, I do agree that the Parliament of England had regulated freights by statute. I agree that our State Legislatures have power to regulate the price for carrying freights. The Parliament of England regulated many other things; they regulated the price of bread; they granted monopolies; they regulated the price of grain in the earlier history of the country. They considered that they had the prerogative to regulate almost everything that subjects of the realm did. But I do not suppose, because they did such things, that we have the same power; or if we had, could wisely exercise it. I hope that we have got away from the state and government regulations that used to prevail in the earlier history of civilization, and I should like some better precedents for such a bill as this than the old English method of regulating by Parliament or royal decree everything which the subjects of that realm might undertake to do. The law in regard to common carriers, where there is no statutory regulation, is well settled; but we all know that our Legislatures are continually passing laws releasing to some extent common carriers from these ancient liabilities, releasing innkeepers from some of the old common-law liabilities, and allowing them to make special contracts in particular cases, limiting their liabilities by notice to their customers. Our Legislatures have agreed that they ought to be allowed by contract to limit their liabilities; that A and B, as citizens of the country, are better able to settle their own matters between themselves and determine what liabilities shall rest upon each, than the Government is to settle the matter for them. Indeed, sir, modern civilization, as I am glad to believe, is losing faith in the sovereign virtue of legislative enactments to cure all evils in the body-politic, and is, I hope, approaching the conclusion that the best way to develop men or states is to give the individual the greatest freedom consistent with order, and leave him to work out for himself his own destiny.

Mr. Speaker, in calling attention to two or three authorities on this subject, in respect to whether a regulation of commerce can properly be pushed to the extent provided for in this bill, I shall be obliged in part to go over some of the ground which has already been traversed by those who have preceded me in the debate, since the authorities have been thoroughly examined and quoted very fully. I have one or two authorities, however, which I have not seen referred to, and to which I will call the attention of the House.

It has been asserted here that this right to regulate freights grows out of the power to regulate commerce. I have discussed that to some extent already, and have given some of the reasons why I do not think the right exists to the extent claimed in this bill. I do not think the authorities cited here in the argument go to the extent asserted in this measure by any means; in fact, the decisions of the court upon this question, so far as they approach this particular point, are always adverse to the claim of those who advocate this proposed legislation. In the Passaic Bridge case, which I believe has not been referred to, the decision was rendered by Mr. Justice Grier. The case, it will be remembered, was an action brought to remove a bridge that had been built by the State authorities over the Passaic River. The court held that although it was an obstruction to commerce, yet they did not think it was such a bridge as the State had not the power to erect in the absence of congressional legislation on that subject. Mr. Justice Grier, in the course of an opinion printed in 3 Wallace, uses this language:

Canals, turnpikes, bridges and railroads are as necessary to the commerce between and through the several States as rivers, yet Congress has never pretended to regulate them. When a city is made a port of entry, Congress does not thereby assume to regulate its harbor, or detract from the sovereign rights before exercised by each State over her own public rivers. Congress may establish post-offices and post-roads; but this does not affect or control the absolute power of the State over its highways and bridges. If a State does not desire the accommodation of mails at certain places, and will not make roads and bridges on which to transport them, Congress cannot compel it to do so, or require it to receive favors by compulsion. Constituting a town or city a port of entry is an act for the convenience and benefit of such place and its commerce; but for the sake of this benefit the Constitution does not require the State to surrender her control over the harbor or the highways leading to it, either by land or water, provided all citizens of the United States enjoy the same privileges which are enjoyed by her own.

Here the court say in very plain language that the power of the State over its own canals, railroads, turnpikes, bridges, &c., is exclusive, and that Congress gets no power over them to regulate them in any way by virtue of the power to regulate commerce.

I accidentally came upon another authority, which has not been presented to the House, and is not, I believe, in any printed volume of reports. While looking over the letter of the Secretary of War with a view to making up my mind in respect to what I ought to do as a legislator here in regard to the Louisville and Portland Canal project, now pending before the House, I found an opinion delivered by Mr. Justice Miller, who has been quoted on this floor as much as any member of the Supreme Court of the United States as authority in favor of congressional regulation of freights or tolls on railroads.

Now, if the House will be patient with me long enough to state as briefly as possible what this case is, they will see the point of the authority as I quote it. The Portland and Louisville Canal was originally built by the State of Kentucky, or by a corporation created by the State for the purpose, and tolls were allowed to be levied for the use of the canal. Gradually the United States became the owner of all the stock except five shares. After it had become the owner of

such stock, application was made to Congress for leave to mortgage the canal, issue bonds on that security, and go on enlarging and improving it. Bonds were issued on the strength of that permission to the amount of nearly \$1,500,000, and the canal was mortgaged for that purpose. Those bonds are still outstanding. After that the United States made an appropriation for work on the canal, I think in 1872, and I read an extract from that appropriation bill:

For continuing the work on the canal at the Falls of the Ohio River, \$300,000. And the Secretary of War is hereby directed to report to Congress at its next session, or sooner, if practicable, the condition of said canal, and the provisions necessary to relieve the same from incumbrance, with a view to such legislation as will render the same free to commerce at the earliest practicable period, subject only to such tolls as may be necessary for the superintendence and repair thereof, which shall not, after the passage of this act, exceed five cents per ton.

I ask gentlemen to mark the phraseology of this provision, "subject to such tolls as may be necessary, &c., which shall not, after the passage of this act, exceed five cents per ton." This is the first instance I have found of legislation by Congress to regulate the rate of freight. Here was an act of Congress providing that after a certain time tolls on this canal should not exceed five cents per ton.

Now, what followed? The United States proposed to go on and make the improvement under this appropriation. The persons interested in the bonds issued by the canal company filed a petition before Mr. Justice Miller, asking to have the United States enjoined from going on with the work, and setting forth as a reason for the injunction that if they accepted this appropriation under the terms of the act they would be bound by this limitation of the rates of toll per ton to be levied upon the commerce that might pass through that canal. They asked for an injunction on that ground, in order that the security for their bonds might not be impaired. Mr. Justice Miller went over the ground somewhat at length, holding that the rights of the parties would not be imperiled in the least by allowing the work to proceed. He then used this language:

The argument is, therefore, not without force, that Congress meant, when they said such tolls should not exceed five cents per ton after the passage of this act, such act as they contemplated in future to pass to satisfy or remove that incumbrance.

Suggesting that Congress did not mean that the toll should be regulated at five cents per ton after the passage of the act of appropriation, but only after the passage of some subsequent act, he then goes on to say:

It must be confessed that the language is not after this construction, and that in their caution the directors might have well supposed that Congress intended to limit the tolls at once to five cents per ton.

If this construction of the statute be correct, then I have no hesitation in saying that that part of it which so limits the tolls is void, for the plain reason that it is a legislative attempt to destroy vested rights and a taking of private property for public use without due compensation.

I think I have shown that the prosecution of this work is for the benefit and advantage of all concerned; that it does not seriously interfere with the ordinary use of the canal, and that the accomplishment of the work will neither confer on Congress the right to regulate the toll nor validate the attempt already made to do so, if Congress really intended to make such attempt.

Now that is the only authority, to my knowledge, which goes to the very question whether Congress has power to regulate the price for carrying freight when that regulation might impair vested rights.

Mr. HAWLEY, of Illinois. Will the gentleman permit me to ask him one question right here, if it does not interrupt him too much?

Mr. WILLARD, of Vermont. It is only a question of time. If I

can have my time extended so that I can go a little beyond the hour, I do not object to interruptions.

Mr. HAWLEY, of Illinois. I wish to ask the gentleman if he does not know that Mr. Justice Miller has decided in regard to railroads that Congress has power to regulate the prices which railroads shall charge for freights?

Mr. WILLARD, of Vermont. I do not understand that he has so decided.

Mr. HAWLEY, of Illinois. I so understand.

Mr. WILLARD, of Vermont. I do not understand that any such decision has been made or has been quoted in this debate. In the Clinton Bridge case, which has been quoted here, Mr. Justice Miller decided that Congress had the same power to regulate commerce by railroad that it had to regulate any other commerce. But he did not in any other particular touch the question of the regulation by Congress of the rates of freight to be charged by railroads.

Mr. HAWLEY, of Illinois. I understand he did go to that extent.

Mr. WILLARD, of Vermont. Do you understand that it was so in the Clinton Bridge case?

Mr. HAWLEY, of Illinois. I do.

Mr. WILLARD, of Vermont. That is a case familiar to almost every gentleman in the House. I have read the case several times, and I have not seen that point touched upon. I do not understand that it was touched at all. The only question decided in that case was, whether the power to regulate commerce among the States authorized Congress to validate or legalize a bridge over the Mississippi; and the court held that Congress had that power. The point that Mr. Justice Miller did discuss and decide, was, that Congress had the same power to regulate commerce by railroads as to regulate commerce on navigable waters. I suppose the right to be precisely the same in the two cases.

Mr. TREMAIN. As this is a new question to me, I would like to put an inquiry to the gentleman. In his judgment, would there not be a distinction between the case he cites and the cases relied on by the other side, for the reason that in this case there was no interstate commerce involved; for, as I understand, a mere local canal was in question.

Mr. WILLARD, of Vermont. The question could not have arisen in that form, because almost all of this commerce is interstate commerce. It is the commerce passing up and down the Ohio River. There is not a vessel going through that canal that does not go through more than one State. The question did not seem to be pressed on either side as to whether it was a proper regulation of commerce. I only quote the authority of Mr. Justice Miller here upon the point squarely raised, that an attempt to regulate the tolls over that canal could not be enforced because it would be a disturbance of vested rights.

This leads me to speak of one other point that has arisen in this debate. It seems sometimes to be assumed in the discussion of this question, as in the discussion of some other questions on this floor, that the Congress of the United States can impair the obligation of a contract; that, for instance, if I happen to owe the gentleman from Massachusetts, [Mr. BUTLER,] who sits in front of me, \$500, which I have by promissory note agreed to pay him in one year, Congress can pass a law declaring me free and exempt from that contract; and that he shall not afterward have the power to enforce the contract in a court of law. Now, Mr. Speaker, I suppose that if this doctrine has

any authority whatever, it must rest on the idea that the Congress of the United States is not bound by the same rules of honesty, justice, honor, and uprightness that ought to govern any other legislative body. It is true, Mr. Speaker, that no prohibition on the passage of a law impairing the obligation of contracts or destroying vested rights is put in the Constitution, except in one of the amendments where it stands undoubtedly as a prohibition, providing that private property shall not be taken for public use without just compensation. But I understand the courts have always held, when that question was presented squarely, that the Congress of the United States has no more power to impair the validity of a contract than a State Legislature has. They have held, to be sure, that where Congress, in the proper exercise of some power conferred upon it, has enacted a law that might in some remote degree impair the validity of a contract, such legislation would not for that reason be unconstitutional. But wherever the question has been presented, I have no doubt they have held, and would hold, as Mr. Justice Miller held in this case, that there is no power in Congress any more than in a State to divest the vested rights of individuals, except by giving just compensation therefor.

Mr. Speaker, I am arguing this case with reference to the rights of railroads, not because I like railroad management; for every instinct of my nature, every impulse of my being is on the side of the people in any controversy they may have with railroads. I will go as far as any man in any measure which can be shown to be safe and wise and constitutional, to put limitations upon these railroads. But, sir, supposing this bill is passed, what does it accomplish? It provides that these railroads shall charge only reasonable rates of freight. Now, how do these railroads exist? They come into operation, every one of them, (except the few that have been chartered under congressional authority,) by virtue of some State grant; and they have no rights or powers except those conferred upon them by that legislative enactment. A railroad chartered in Massachusetts cannot do any act except what the law creating it allows it to do. It cannot even engage in interstate commerce, unless its charter allows it to do so. It cannot carry a pound of freight out of the State nor bring a pound of freight into the State if the Legislature has prohibited it from doing so. It is an artificial person in every sense of the word. It has no existence whatever except the existence given to it by the State authority. The measure of its existence, its stature, its dimensions, its powers, are derived wholly from the State Legislature. You cannot by congressional enactment give it any power nor take from it any power. If at the outset, any powers granted to it were in violation of the Constitution or laws of the United States, of course it could not exercise those powers, and the original grant would be void to that extent, but in all other respects its charter is the law and reason of its existence.

Mr. FORT. Will the gentleman indulge me in one more question? I desire to ask him whether, in his opinion, a State can charter a company with the power to do business outside of the State—to run a steamboat, for instance, in carrying commerce from State to State in violation of the laws of Congress?

Mr. WILLARD, of Vermont. I agree with the gentleman entirely that the law of the State has no extraterritorial force. Whatever powers a corporation exercises outside of the limits of the State creating it, it exercises wholly by the consent of the State wherein it may exercise such powers. It does not exercise them by virtue of the original grant, or by virtue of the laws of the State creating it.

The point I make is that the power, the rights, and the duties of such corporations are created and defined by the State law, and cannot, therefore, be afterward defined or bounded or limited by any national legislation, without interfering not only with the right of the State to control and govern them, but with the right of the corporations to enjoy undisturbed the privileges which a State has given to them and has never withdrawn.

There cannot be any concurrent control. The State control excludes the Federal, as the Federal would, if exercised, exclude the State. And this regulation of rates of freight will thus take from these roads a right given to them absolutely by their charters, to contract with shippers upon such terms as may be agreed upon for the transportation of commodities; yet this right, as against the Federal Government, has become by all rules of law a vested right.

Besides, the power to fix a reasonable price involves the power to fix any price and compel compliance. It may be fixed so low as to destroy the value of the property, and yet there can be no redress.

Indeed it is no more beyond the power of Congress to say that railroads shall carry freight for nothing than it is beyond its power to make this bill a law, because the courts have frequently said, as they said in the case of the taxation of United States securities, if we grant the power at all we must grant it to the fullest extent; if we grant the power to regulate these freights at all, then the power resides in the Congress of the United States to regulate them absolutely, and they may fix them as low as they please, and then make it compulsory on the roads to carry freights at the price thus fixed. That is what this bill does. The bill says if the rates are fixed it shall in effect be a crime for any road to charge more; that if a railroad shall charge any more than these rates, or shall refuse to carry freights at these rates, such road shall be punished by exacting of it a heavy penalty. You have established the power in Congress, if this bill is held to be constitutional, not only to fix these rates arbitrarily at whatever it may see fit, but you provide a penalty for failure to abide by such schedule of rates.

The SPEAKER. The gentleman's time has expired.

Mr. BUTLER, of Massachusetts. I hope the gentleman will be allowed to conclude his speech.

There was no objection, and it was ordered accordingly.

Mr. WILLARD, of Vermont. Now, sir, I wish to call the attention of the House to what Mr. Justice Strong says in the case of the State freight-tax, as that decision has been relied on as authority for the legislation here asked for. It was especially urged as a reason why the tax in that case was not unconstitutional that to hold it to be so would be to hold that a State could not tax the franchise of a corporation created by its legislation, nor even charge tolls upon any railroad or highway of which it might be the owner, as such tax or such tolls would be either immediately or remotely a tax upon interstate commerce.

Mr. Justice Strong held, however, distinctly that there was no power in Congress to regulate freights under the guise of a regulation of commerce. He says:

That this argument rests upon a misconception of the statute is to our minds very evident. We concede the right and power of the State to tax the franchises of its corporations, and the rights of the owners of artificial highways, whether such owners be the State or grantees of franchises from the State, to exact what they please for the use of their ways.

Now, that is a plain declaration; and, so far as that case goes and

is authority for anything, it is a concession that the question of freight charges is entirely beyond the control of Congress and cannot be enacted here as a regulation of commerce. The court say that the right to fix rates of freight is "an attribute of ownership," as it very clearly is.

Now, Mr. Speaker, so far as there are any authorities which touch this point at all, so far as the courts have given utterance to any opinions as to State regulation and congressional regulation on the subject of rates, we find they have invariably decided, as Mr. Justice Miller decided in the Louisville and Portland Canal case, and as was decided in the case to which I have just called the attention of the House, that the right to fix the price of freight is an attribute of ownership and not an attribute of sovereignty, and certainly is not included in the congressional power to regulate commerce.

Some one may say, how then can a State control freight charges? The State gets that right, not by reason of power to regulate commerce in the State at all, but it gets it by reason of its sovereignty and control over the thing in all of its aspects. It created and chartered the corporation, and of course it can regulate the corporation. It can put limits to it. It can appoint what it shall do and what it shall not do. The fact of the power does not rest on the right of the State to regulate commerce, but on its sovereign power over the artificial person existing only by virtue of its creative act, and which must therefore necessarily be subject to every regulation which it may see fit to make.

Mr. HAWLEY, of Connecticut. If the charter has been granted without reservation of right to alter or control it, how does the gentleman get in the State Legislature the right to regulate rates which may result, as he has argued, in practically killing the charter?

Mr. WILLARD, of Vermont. That difficulty has occurred, I suppose, to every gentleman who has considered this matter. It is a difficulty, it will be observed, that may be equally urged against congressional legislation.

Mr. HAWLEY, of Connecticut. I know that.

Mr. WILLARD, of Vermont. And if, as against that objection, a State cannot regulate this, so neither can Congress. I am not ready to go the length to which some gentlemen go in holding that the Dartmouth College decision was broad enough to take from the State the control of rates of freight when it had given a charter without fixing particular rates. It appears to me that the sovereign power of the State, except so far as rights may have vested under a grant and which are technically called vested rights, cannot give away this control so as to put it out of the power of a subsequent Legislature. If the Legislature of Connecticut should grant a charter to a railroad—there having been no railroad in that State before—with a provision in the charter that the Legislature of the State would not at any subsequent time grant a charter to any other railroad in the State, it would follow, by the logic and authority by which some reach the conclusion based on the Dartmouth College case, that such a provision would bind all future Legislatures and prevent the State from granting a charter for another railroad? But I apprehend that no court would hold that any Legislature could bind its successors to that extent. And if a Legislature cannot do that, cannot bind its successors by such a provision, it seems to me very doubtful if they can bind them by simply neglecting to put in the grant a reservation of control over the charter. But I simply suggest this, and I should not feel bound after a further examination of the authorities to stand by it

as a correct statement of the law. But this is true, I understand, of all the more recently chartered railroads; they have all, or nearly all of them, that reservation either in the charter itself, or the constitution of the State makes provision for it.

Mr. BUTLER, of Massachusetts. Was not that question decided definitely by the Supreme Court in the Charles River and Warren Bridge case?

Mr. TREMAIN. That you could pass a subsequent act changing the charter?

Mr. BUTLER, of Massachusetts. That another bridge might be placed alongside of the former one.

Mr. WILLARD, of Vermont. That case was for the moment out of my mind, and I am obliged to the gentleman from Massachusetts for calling my attention to it. It is a case where the Legislature considered that they had the power to authorize another bridge to be put alongside the one previously chartered, and the law was held valid.

But I must pass on from this view of the case, and I apologize to the House for occupying so much of its time; although I find that I have necessarily to pass over much that I had intended to say. I wish to get at another view of the question, which seems to me the more practical one. I understand most of the grievances of which complaint is made here do not have reference to through freight. For instance, the gentleman from Iowa [Mr. WILSON] in the speech he made on this question, and in which he arrayed statistics which are really very valuable in its discussion, stated as one grievance that the railroads of Iowa would not carry freights from the interior of that State to the Mississippi River—a transportation wholly within the State, the railroads of course being chartered by the State and being under State control—at the same rates per ton per mile as if shipped from Omaha or Davenport to New York City. And the gentleman insisted that we should regulate the rates here by congressional legislation; that we should provide that the railroads of the State of Iowa—railroads which are wholly within that State, subject to State control—shall carry freight from the interior of that State to the Mississippi River, there to be delivered to the steamers to be taken down the river, at the same rates per ton per mile for which they would carry them to New York City.

Now, such a regulation would be held unreasonable in the judgment of every gentleman present; but whether reasonable or unreasonable, it is a matter in the control of the State. I observe that the gentleman from Massachusetts [Mr. BUTLER] shakes his head. I suppose he is thinking of the decision which was brought into this discussion in the Daniel Ball case, which was quoted by the gentleman from Michigan, [Mr. BURROWS,] whom I do not now see in his seat; where the court held—though I doubt whether they would ever hold so again if the case were fully presented and argued before them—that any package started anywhere in the State and destined to a point out of the State, or brought from outside the State into the State, was interstate commerce, and was to be regulated by congressional legislation, and there could be no State control over it. Of course it cannot be regulated so far as putting any tax upon it by the State is concerned, or any prohibition as to its being brought into the State, or anything of that sort. But it occurs to me as a great stretch of the doctrine on the part of Mr. Justice Field in that case, when he said that a steamer running wholly within the State of Michigan, on the Grand River, and taking on board goods destined for a point outside the State, must have a license under the United States law. He had

in a former part of the opinion said that the vessel must have a license, because the river was a navigable water of the United States. This being so, the other point did not need to be decided, as the United States statute, in terms, requires all vessels employed on navigable waters to have a license; and the *dictum* of the judge may therefore fairly be considered as out of the case.

But the point I make is this: the railroads, as I have already said, are the creatures of the States, and the State can fix the rates of freight if any power can fix them on those railroads. It can fix them just as much on freights going out of the State or brought into the State as on freights delivered from point to point in the State. It can, doubtless, prohibit a railroad from bringing freight into the State or taking freight out of the State. It certainly can say that whatever freight is taken up at any point shall be carried for so much per ton per mile over its road. In this respect it makes no difference that the line has been leased to foreign corporations, because the foreign corporations take no greater rights under such lease than are possessed by the company making the lease. I have no doubt the State can regulate rates on railroads in the State, provided such regulations do not conflict with a fair interpretation of the law as expounded in the Dartmouth College case. It can charter a corporation for a specific purpose, and it can limit that corporation in its work to that specific purpose; and having done so, the corporation has no right to violate that law, and if it does so, it forfeits its charter.

But in calling attention to the suggestion made by the gentleman from Iowa [Mr. WILSON] I had in my mind also a suggestion made by the gentleman from Illinois, [Mr. HURLBUT.]

Mr. WILSON, of Iowa. I think the gentleman misunderstood me.

Mr. WILLARD, of Vermont. As I understood the gentleman from Iowa, he made the objection that the railroads of Iowa would not carry freights from the interior to the Mississippi River at the same rate per ton per mile as freights are carried from Omaha to New York City.

Mr. WILSON, of Iowa. That is not quite all. If the gentleman will allow me, I will explain what I did say.

Mr. WILLARD, of Vermont. The gentleman will excuse me now. If I have misapprehended his point, I certainly did not intend to do him injustice.

Mr. WILSON, of Iowa. It will take me but a moment. The point I desired to make was that the discrimination in freight from the interior of the State to the river was so very great that nothing could stop at the river.

Mr. WILLARD, of Vermont. I meant to say that the gentleman complained of the charges from the interior of the State to the river. The gentleman from Illinois [Mr. HURLBUT] said that it cost as much to take up freight at Belvidere, his own home, and carry it to Chicago, seventy-five miles, as to take up similar freight at Omaha, four hundred miles away, and bring it through Belvidere and deliver it in Chicago. I have no doubt that is so; but it is a matter which the State of Illinois can regulate and has undertaken to regulate, although I understand that the regulation does not work to the satisfaction of any one but the railroad corporations.

Mr. FORT. They are not satisfied.

Mr. WILLARD, of Vermont. The people are certainly not satisfied whether the railroads are or are not. But the Chicago and Alton Railroad Company is making more money than ever before, and the people at competing points are complaining because they are charged

more for freight now than they were formerly for the same distance, while there is no relief for those doing business at non-competing points.

Let me suggest another difficulty. There are several railroads that connect with railroads outside of the United States. The Vermont Central Railroad connects with the Grand Trunk Railroad. The Grand Trunk Railroad lies partly in Vermont and partly in New Hampshire, and partly in Maine, but it has the larger portion of its line in Canada, and then it connects with the Michigan Central Railroad at the other end. The New York Central Railroad connects with the Great Western Railroad and with other roads in Canada. Now, how are you going to regulate freights brought from Canada over those roads? How are you going to regulate freights carried from Chicago to Port Sarnia, and then over the Grand Trunk Railway to Rouse's Point, and then over the Vermont Central and other lines to Boston? Part of the line is entirely beyond your jurisdiction, and you cannot regulate the rate of freights in any way on that portion of the line. You may say that the Vermont Central Railroad shall not carry through freight and charge more than a certain amount per ton per mile; but that road is forced to make connection with a foreign corporation, over which you have no power, and concerning which you can say nothing. And yet it really derives a large portion of its business from that foreign railroad, or that which comes over the lakes by way of Ogdensburgh to Rouse's Point. Now, here you have a difficulty which is insurmountable. You cannot regulate the freights shipped in that way.

But what more? This bill in terms is applicable to through lines. I confess I do not quite understand the phraseology of the bill, or how far this matter of through lines is expected to reach. There are over four hundred railways in the United States, according to the latest statistics, and if you regulate through freights you have to regulate them upon every road. There may be a small road in Massachusetts, perhaps only five miles long, and yet it may take up freight to be delivered in San Francisco. A short piece of road in Vermont may take up freight to be delivered in New Orleans. How are you going to fix the rates of freight on that? By what measure will you estimate it? How can you fix the rates upon that little road which does not carry freight enough to pay running expenses, and which is built mainly for the purpose of developing the resources of some particular locality, the marble or slate interest of my State, or some manufacturing interest in some other State—how are you going to regulate its charges when it takes up a car of freight to be delivered a thousand miles away, part of which charge may be going to another road which may have a higher or a lower rate? It may have to be shipped over a dozen different roads before it gets to its destination, and the rates of freight to be fixed by this commission over those roads may not be alike on any two of them. Then how are you going to regulate rates on this little road, supposing you have the power? This only shows one of the difficulties which it seems to me must lead one to believe that the power does not exist.

Mr. G. F. HOAR. These rates are now fixed by the roads themselves. The bill provides, in the first place, that where the schedules are satisfactory from one point to another these commissioners need not interfere. They are not bound to establish schedules for every small or every large line in the country. In point of fact the rates of freight are now fixed by conventions of railroad superintendents, and made known to the public in all cases, as the gentleman knows.

Why is it, then, more difficult for these nine commissioners, on an appeal, to give their schedule, than it is for the railroad officials to give theirs?

Mr. WILLARD, of Vermont. I do not understand that to be so, as a matter of fact. I do not understand that a little road in my State, which may only operate ten miles, is obliged to conform its rates to the schedule adopted by the New York Central Railroad.

Mr. G. F. HOAR. If the little railroad ten miles long takes freight at one end of its road and leaves it at another, and has no business arrangement with the long road, it does not come within this bill at all.

Mr. WILLARD, of Vermont. I do not know whether it comes in terms within this bill.

Mr. G. F. HOAR. Allow me to finish the sentence, if you please. If it is doing business as part of a line from State to State, if it is in partnership with other roads which with it make up that line, then the line establishes and makes known to the public the rate of freight. This bill provides that any person interested may appeal to these commissioners; that the commissioners may revise the schedule, and then, not that the revised schedule is binding upon the road, but if anybody claims in court that the railroad is charging an unreasonable price, the fact that the price charged exceeds that of the schedule revised by the commissioners is *prima facie* evidence of unreasonableness, and the road must show that the schedule is wrong.

Mr. WILLARD, of Vermont. I understand that is the object of the bill; but I do not understand that the bill is limited to fixing rates of freight on what may be called through lines.

Mr. G. F. HOAR. It is very careful in that particular.

Mr. WILLARD, of Vermont. In point of fact if it does not reach through freights, whether taken up by short and independent lines or by those having through arrangements, it fails to reach the chief source of difficulty. If it does not affect local freights which are to be taken up to be delivered perhaps at the end of the line, then to be shipped to some other State, it does not remedy the evil complained of. For instance, in my State there is a short line of railroad connected with the marble and slate quarries. The complaint is that that short piece of road charges more than it ought to, and that if there was a competing line freight could be shipped cheaper than it can be now. That road does not connect with the New York Central road by a *pro rata* arrangement, nor with the Vermont Central, nor with the water-line; but it takes up freight at a stipulated price and carries it to the end of its line, and it is of its rates that complaint is made.

Mr. G. F. HOAR. To be delivered in Vermont?

Mr. WILLARD, of Vermont. I do not know whether it delivers its freight in Vermont or in some other State at the end of the line over which it has control.

I call attention now to another difficulty in bringing the prices for transportation of freights to any arbitrary standard.

I have here the fifth annual report of the railroad commissioners of Massachusetts, and I call the attention of members to the differences in the earnings and expenses of those roads. Mr. Adams reports that there are nineteen roads in Massachusetts, the average receipts of which are \$14,000 per mile; the amount varying from \$2,000 on the Duxbury and Cohasset road, to \$36,000 on the Boston and Albany road; that the cost of operation amounts to \$10,000 a mile on the average, the cost on some roads being much greater than on others; and the rates of freight varied from 1.01 cents per ton for long dis-

tances to one dollar per ton for short distances. Is it not apparent to any one who knows anything about railroads, where so many elements are to be taken into account and such widely different rates must be established, that you cannot fix these rates by any regulations that may be in the least uniform. You must take every one of the four hundred and sixteen roads in the United States and fix the freight on each one of them, and they will vary from one cent per ton to one dollar per ton per mile, as is seen in this statement of the Massachusetts roads; and he who supposes that any good to any one can come out of any such attempted regulation must have a much greater faith in the power of legislation than I have.

Most of these roads have been built for the purpose of developing the country; in many cases—as in my own State—by taxation on towns. A road has recently been put in operation in Vermont to which the town in which I reside gave \$200,000, and we are now charged more than 1 per cent. as a tax each year to pay the interest on the bonds we issued to raise that money. The road does not now, and will not for years, pay any dividends on the stock for which we subscribed; and if it pays the interest on its mortgage-bonds, it will do better than I dare hope.

We should be glad of any legislation that will enable it to earn a fair interest on its cost; but I do not understand that the framers of this bill propose to make unprofitable roads profitable. Instead of that, they propose to make them less profitable than now, and put farther away the day when such roads as this, helped by my town, can make any returns to the stockholders whose hard-earned money has made it possible to build that public highway.

But that road has increased the value of property all along the line. The subscriptions made to it by many towns are supposed to be no more in amount than the benefit to those particular towns; and I suppose such has been the case. It has been running, and will run for years, not making a cent of dividend on the stock. It will probably never do so. The dividends, if it makes any at all, will be only payments of interest on the bonds; and it is not at all unlikely that in a few years it will fall into the hands of the bondholders. The case is the same, I venture to say, with the great majority of railroads in the country. No money put into investments within the last twenty years in this country has turned out so unprofitably for the investors as the money put into railroads; and no money invested anywhere has been so profitable to the country as the money invested in railroads. It has made the western country rich. It has filled it with population. Illinois is to-day where but for railroads it would not have been perhaps for twenty years to come. Railroads have brought every farm in that State within reach of a market. Thus the western country has been developed until it is now not only the granary of this country, but almost the granary of the world.

Of course, this is no excuse or justification for extortionate charges by the railroads. It is no excuse or justification for the fraud and corruption that have existed in the management of railroads. But it is a reason why men who have honestly put their money into railroads should at least have the same rights in legislation as men who have put their money into any other enterprise.

Now, Mr. Speaker, while apologizing to the House for detaining it so long, I desire to call attention to one other point with which I will close. It has been said once or twice in the course of this debate that since the war we ought not to hear anything in support of the "heresy of State rights;" that the war has in some way transformed this Gov-

ernment into a different government from what it was before. Sir, I am glad to know that the country is somewhat different from what it was before the war. I am glad to know that through reconstruction some substantial benefits have been produced. I am glad to know that the Federal Government, through that reconstruction, has more power to-day to protect the rights of citizens, to secure equal rights throughout the United States, than it had before the war. Yet I cannot understand how the power to regulate commerce has been in any way affected by this change. I am at a loss to understand how any provision of the Constitution that has not been modified by the thirteenth, fourteenth, and fifteenth amendments, has been changed in the least, has had anything taken out of it or anything put into it, by reason of the war.

But I will tell you, Mr. Speaker, what the war has done and what those amendments have done. They have put more liberty into the Constitution of the United States and more freedom into this Government. What is liberty and what is freedom? Slavery was the power in a man or in a government to say what my work or your work should be worth, or whether we should have anything for it besides our food and clothing. Slavery was the power in a man or a government to make muscle its servant, at whatever price that government or that man might say it should work. Freedom means your right and my right and the right of every man to the free exercise of every power and faculty that has been bestowed upon us by nature; it means the right for me to work for any price which I choose to ask, whenever any one will pay me that price for my work.

Mr. Speaker, if the war has done anything, it has made the right of self-government dearer to the American people than it was before. It has made the right of the individual and of the local community more secure, established by surer guarantees, and hedged about by stronger muniments of title, than in the time when masters or governments could hold men as servants, and communities and races as unrepresented subjects, with no political, and with few, if any, personal rights.

Why, sir, look at the spectacle we have had within the last few weeks in Virginia. The democratic Legislature of that State were of the opinion that the city of Petersburg was not properly governed by the people of that city; that the Legislature should regulate its government and should declare, not in terms, but by a cunning provision of law, that the colored men of that city should not exercise the right of suffrage in the local government. Governor Kemper, holding fast—and I honor him for so doing—to the traditions of his party in respect to local self-government—

Mr. COX. That is good democratic doctrine.

Mr. WILLARD, of Vermont. That party does not always hold fast to the principle; but in this case Governor Kemper did so, and he vetoed the bill. He said that the city of Petersburg should have local self-government, and that the colored people of that city should have a voice in the administration of its affairs, although his way in the attempt to secure it for them might be lighted with his burning effigies; and in that brave declaration the rights of the colored people of the South have a surer protection than any exercise of Federal power can give them.

Now, sir, if we have been taught any lesson in these times it is the lesson that local self-government is the best government for any people. We do not want any more measures of legislation brought here than are absolutely required to administer the Government as the Constitution has defined it, and thus to preserve the rights of the whole

people as much by what we refrain from doing as by what we do. If the liberties and the equal rights of this country are to be preserved in the future, they are to be preserved by State and local self-government. What does Massachusetts know about the government that ought to exist in California? What does California know about how the school system of Massachusetts should be administered? Neither of them ought to intermeddle with the rights and duties of the other. Each of them should be at liberty to determine what its own method of government should be; how its own people should be ruled in their domestic affairs; how its own sovereignty should be carried on. The gentleman from Connecticut [Mr. HAWLEY] in front of me said, when some discussion was had in the last Congress on the educational bill, that it was wiser to have thirty-seven States to settle these questions than to have one body like this to settle them, and, although he always speaks wisely, he never said a wiser thing than that. If you are going to bring the local affairs of all parts of the country, in all the thirty-seven States which we now have with the vast territory they cover, to be settled here mainly by men who know little of and care less for the effect of legislation upon remote localities, what chance is there that in nine cases out of ten injustice and wrong will not be done? What possible expectation can there be that the people of California can be aided in controlling the railroads of that State by the Congress of the United States? They have the power to do it themselves, and they have just shown that they know how to use that power; and there is no State in the Union less bold, less resolute, less able to solve this railroad problem for itself than California and Illinois and Iowa have shown themselves to be. In every aspect of the proposition, I believe that the control of these railroads should be left where it has always been, with the States.

But, sir, I cannot forbear saying, in passing, that I do not suppose the great railroads—those operated by Vanderbilt, or Jay Gould, or Tom Scott—will object to congressional control; certainly these railroad kings have given no sign of hostility to this measure, and they are not usually quiet when they consider themselves in danger. Controlling, as they do to-day, lines of railroads reaching into every State in the Union, they would be glad to be rid of State control and have but one legislative body to look after. But can any one who has seen what the power of money and the greed of money has accomplished in national legislation look without the most serious concern upon a proposition which makes it for the interest of the managers of the seventy thousand miles of railroad in this country to control the national administration? The railroads of the United States represent a capital of nearly \$4,000,000,000, and by the use of money wield a tremendous power. Who wants to turn that power upon the Congress of the United States, and make it for the direct interest of the railroads to nominate Presidents, and name Cabinet officers and judges, and select members of Congress, and accomplish politically whatever the power of money will buy, or the fear of hostility will compel? Let him who would invite such a future for our national politics vote for this bill, and he will have taken a long step toward that result, a result more debauching and demoralizing to our politics than any invited or accomplished by any previous legislation in our history.

One word more, and I have done. If we inaugurate this species of legislation other measures become inevitable. We are attempting to fix prices. We are attempting to make contracts between parties abundantly able to make contracts for themselves. We are attempt-

ing to say what A shall receive from B for his services, and what B shall pay. Is it not plain to what this must lead? The railroad whose freight charges are fixed by law may rightfully demand that the price of what it has to buy shall be fixed by law. It will want cheaper iron. It will demand cheaper engines and cheaper cars. It will ask to be protected against strikes of engineers and employes, and for the aid of United States authorities to compel its workmen to receive and work for such wages as a congressional commission may fix. And if you fix the price of the laborer, then you must fix the price of the coat, of the boots, of the shirt which the laborer wears, and of the food with which he supports life. Will this stop anywhere short of the practices of governments which modern political writers of all schools have treated as evidence of a semi-civilized people, incapable of self-government and scarcely fit to be anything better than slaves—the governments which have everywhere given place to those giving freer play to all human faculties, and which have looked for man's highest development in the culture, in the greatest possible freedom of all human powers? A century or more ago this government control was a type of despotism, of absolute power, which could trust nothing to the people and did not believe in human progress. Now it is a type of a subtler and more dangerous political economy, which ends, if pursued, in communism, or the use by the Government of the property of the people for the benefit of what a majority may by vote decide to be for the general welfare. Every measure like this looks in that direction; and in the tendency of such legislation I think I see one of the greatest perils now threatening the future of the Government. Our safety lies in less faith in the machinery of government, and in greater self-reliance on the part of the people.

No man, said Disraeli, ever weakened government as Robert Peel; for he changed so much, people lost confidence in rulers, and were obliged to think for themselves. And hereafter the people of this country will, I trust, so far find their confidence in government machinery weakened by the constant exhibitions of its impotent efforts to save people from the consequences of their own mistakes and misconduct, that they will be willing to leave the Federal power to the exercise of its proper functions, and not attempt through it to hinder the working of economic laws as much beyond its control as are the laws of nature or the movements of the planetary system.

